

4 MAR 1976

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This letter is in response to the oral request of Mr. George Gilbert of your staff for the views of this Agency on S. Res. 400, which would establish a new standing Senate Committee on Intelligence Activities. The Central Intelligence Agency takes the position that the way in which Congress chooses to exercise its oversight responsibility is basically a question for the Congress to determine. These comments, therefore, are limited to those aspects of congressional oversight which directly affect the ability of this Agency to fulfill its statutory mission.

Exclusivity of Jurisdiction of CIA

Section 3(a) of S. Res. 400 amends Rule XXV of the Standing Rules of the Senate to set forth the jurisdiction of the newly proposed committee. Section 3(c) amends the jurisdiction of the Armed Services, Foreign Relations, Government Operations, and Judiciary Committees to exclude matters within the jurisdiction of the proposed Committee on Intelligence Activities. One of this Agency's major goals in oversight has been that jurisdiction be concentrated exclusively in the minimum number of committees required to effectively conduct it. Although a joint House-Senate intelligence committee would reflect maximum concentration of oversight, CIA believes separate Senate and House committees are acceptable, as long as the jurisdiction of these committees is exclusive. The changes in the charters of other relevant Senate committees would, if not read in conjunction with Section 7(c)(2), seem to accomplish this desired exclusivity.

However, Section 7(c)(2) of S. Res. 400 expressly permits the Committee on Intelligence Activities or any member thereof, under regulations to be established by the Committee, to disclose any information "relating to the lawful intelligence activities of any department or agency of the United States" [§7(c)(1)] to any other committee or member of the Senate. In addition, §7(c)(2) permits a member to disclose any information he has learned through



this process to any other member of the Senate, the only condition being he must inform the Committee on Intelligence Activities that he has done so. A major advantage of exclusive committee jurisdiction is to halt the proliferation of sensitive operational information throughout the Congress. Section 7(c)(2) authorizes any Senator to tell any other Senator anything he has learned from the proposed Committee or a member thereof. This would appear to negate a major advantage of the jurisdictional exclusivity established in section 3 of S. Res. 400, and we strongly oppose this subsection.

Jurisdiction of Foreign and Domestic Intelligence

S. Res. 400 would combine jurisdiction of this nation's foreign and domestic intelligence activities within one committee. We believe this inadvisable, for the following reasons:

- (1) The constitutional bases for foreign and domestic intelligence are fundamentally different, as are the problems, objective, standards, etc.
- (2) Fundamental considerations of individual constitutional rights are present in domestic intelligence questions, and are not present in most foreign intelligence questions where Americans are not involved.
- (3) Domestic and foreign intelligence involve quite different political, foreign, and domestic policy problems. In particular, domestic intelligence would not involve the national defense problems inherent in foreign intelligence.
- (4) Domestic intelligence does not involve serious problems of "leaks" which may involve our security as a nation. Foreign intelligence activities do.

Disclosure

Section 7(a) purports to establish the right of the Committee on Intelligence Activities to "disclose publicly any information in the possession of such committees after a determination by such committee that the public interest would be served by such disclosure." Section 7(b) outlines the procedure to be followed in making such disclosures.

It is the position of this Agency that the Congress constitutionally does not have the authority to declassify information classified by the Executive branch. To assert that information which is gathered through the resources

of the Executive branch, processed and analyzed by the Executive branch, and is vital to an Executive branch function, can be released by Congress over the objections of the President, is surely inconsistent with the concept of separation of powers. In addition, on a practical level, these sections would obstruct cooperation between the Agency and the Committee, as this Agency cannot be expected to be forthcoming with the proposed Committee if there is no assurance that its sensitive information would not be made public without its agreement.

Authorization of Appropriations

Section 11 of S. Res. 400 establishes a Senate procedure which would compel the passage of a periodic authorization bill for funds for the activities of this Agency, despite Section 8 of the Central Intelligence Agency Act of 1949, which provides continuing authorization authority for CIA. CIA opposes such a requirement. The purpose of Section 8 of the CIA Act was to protect against disclosure of the CIA budget. Normal authorization procedures would involve the disclosure of the budgets of the intelligence agencies. Although it may be possible that special procedures which would not bring about the disclosure of the budget could be agreed to, Section 11 does not require them.

CIA does not object to the purposes sought to be advanced by this section--to provide the proposed Committee a means to influence the size and program content of the budgets of the intelligence agencies under its jurisdiction. According to the Government Operations Committee's report (Senate Report 94-675), an annual authorization requirement "should assure a regular review of each agency's intelligence activities, its efficiency, and its priorities." We welcome such a review, but oppose any method to accomplish it which would disclose the budgets of the intelligence agencies.

Agency Reports

Section 4(b) of S. Res. 400 directs that the Director of Central Intelligence shall submit unclassified annual reports to the committees on the activities of their respective intelligence components and the intelligence activities of foreign countries directed at the United States or its interests. It would not be possible to prepare an annual report on the activities of CIA and hostile foreign intelligence services which would be unclassified and remain meaningful and not misleading. Therefore, the Agency does not believe such a report would substantially contribute to a public understanding of this Agency, or the intelligence threats facing this country.

These points represent our major concerns with S. Res. 400. We believe a highly coordinated Executive branch approach to Senate action on this resolution is desirable, and my office stands ready to assist in such an effort.

Sincerely,

George L. Cary
Legislative Counsel

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